

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 85

Introduced by Assembly Member Tom Berryhill

January 5, 2009

An act to amend Section ~~21606~~ of (~~21606.5~~ of, and to repeal and amend Section 21608.5 of,) the Business and Professions Code, relating to junk dealers and recyclers.

LEGISLATIVE COUNSEL'S DIGEST

AB 85, as amended, Tom Berryhill. Junk dealers and recyclers.

Existing law prohibits a junk dealer or recycler from providing payment for nonferrous material, as defined, unless the payment is made by cash or check, the check is mailed or the cash or check is provided no earlier than 3 days after the date of sale, and the dealer or recycler obtains a photograph or video of the seller and certain other identifying information, as specified, which information is to be retained by the dealer or recycler for 2 years. Existing law requires a junk dealer or recycler to allow for periodic inspection of any premises maintained for purposes of determining compliance with the recordkeeping requirements, and, upon inspection, to produce his or her sales and purchase records.

This bill would erroneous cross-references in the record production provisions and in other related provisions, and would delete a duplicate provision.

~~Existing law requires junk dealers and recyclers to maintain written records and report that information to the chief of police or the sheriff, as specified.~~

~~This bill would make nonsubstantive and technical changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 21606.5 of the Business and Professions*
2 *Code is amended to read:*

3 21606.5. Every junk dealer or recycler shall, during normal
4 business hours, allow periodic inspection of any premises
5 maintained and any junk thereon for the purpose of determining
6 compliance with the recordkeeping requirements of this article,
7 and shall during those hours produce his or her records of sales
8 and purchases, except as provided in subparagraph ~~(A)~~ (B) of
9 paragraph ~~(3)~~ (6) of subdivision (a) of Section 21608.5, and all
10 property purchased incident to those transactions which is in the
11 possession of the junk dealer or recycler for inspection by any of
12 the following persons:

13 (a) An officer holding a warrant authorizing him or her to search
14 for personal property.

15 (b) A person appointed by the sheriff of a county or appointed
16 by the head of the police department of a city.

17 (c) An officer holding a court order directing him or her to
18 examine the records or property.

19 (d) The amendments to this section made by the act adding this
20 subdivision shall become operative on December 1, 2008.

21 *SEC. 2. Section 21608.5 of the Business and Professions Code,*
22 *as added by Section 5 of Chapter 730 of the Statutes of 2008, is*
23 *repealed.*

24 ~~21608.5.—(a) A junk dealer or recycler in this state shall not~~
25 ~~provide payment for nonferrous material unless, in addition to~~
26 ~~meeting the written record requirements of Sections 21605 and~~
27 ~~21606, all of the following requirements are met:~~

28 ~~(1) The payment for the material is made by cash or check. The~~
29 ~~check may be mailed to the seller at the address provided pursuant~~
30 ~~to paragraph (3) or the check or cash may be collected by the seller~~
31 ~~from the junk dealer or recycler on the third business day after the~~
32 ~~date of sale.~~

1 ~~(2) At the time of sale, the junk dealer or recycler obtains a clear~~
2 ~~photograph or video of the seller.~~

3 ~~(3) (A) Except as provided in subparagraph (B), the junk dealer~~
4 ~~or recycler obtains a copy of the valid driver's license of the seller~~
5 ~~containing a photograph and an address of the seller or a copy of~~
6 ~~a state or federal government issued identification card containing~~
7 ~~a photograph and an address of the seller.~~

8 ~~(B) If the seller prefers to have the check for the material mailed~~
9 ~~to an alternative address, other than a post office box, the junk~~
10 ~~dealer or recycler shall obtain a copy of a driver's license or~~
11 ~~identification card described in subparagraph (A) and a gas or~~
12 ~~electric utility bill addressed to the seller at that alternative address~~
13 ~~with a payment due date no more than two months prior to the~~
14 ~~date of sale. For purposes of this paragraph, "alternative address"~~
15 ~~means an address that is different from the address appearing on~~
16 ~~the seller's driver's license or identification card.~~

17 ~~(4) The junk dealer or recycler obtains a clear photograph or~~
18 ~~video of the nonferrous material being purchased.~~

19 ~~(5) The junk dealer or recycler shall preserve the information~~
20 ~~obtained pursuant to this paragraph for a period of two years after~~
21 ~~the date of sale.~~

22 ~~(6) (A) The junk dealer or recycler obtains a thumbprint of the~~
23 ~~seller, as prescribed by the Department of Justice. The junk dealer~~
24 ~~or recycler shall keep this thumbprint with the information obtained~~
25 ~~under this subdivision and shall preserve the thumbprint in either~~
26 ~~hard copy or electronic format for a period of two years after the~~
27 ~~date of sale.~~

28 ~~(B) Inspection or seizure of the thumbprint shall only be~~
29 ~~performed by a peace officer acting within the scope of his or her~~
30 ~~authority in response to a criminal search warrant signed by a~~
31 ~~magistrate and served on the junk dealer or recycler by the peace~~
32 ~~officer. Probable cause for the issuance of that warrant must be~~
33 ~~based upon a theft specifically involving the transaction for which~~
34 ~~the thumbprint was given.~~

35 ~~(b) Paragraph (1) of subdivision (a) shall not apply if, during~~
36 ~~any three-month period commencing on or after the effective date~~
37 ~~of this section, the junk dealer or recycler completes five or more~~
38 ~~separate transactions per month, on five or more separate days per~~
39 ~~month, with the seller and, in order for paragraph (1) of subdivision~~
40 ~~(a) to continue to be inapplicable, the seller must continue to~~

1 complete five or more separate transactions per month with the
2 junk dealer or recycler.

3 (e) This section shall not apply if, on the date of sale, the junk
4 dealer or recycler has on file or receives all of the following
5 information:

6 (1) The name, physical business address, and business telephone
7 number of the seller's business.

8 (2) The business license number or tax identification number
9 of the seller's business.

10 (3) A copy of the valid driver's license of the person delivering
11 the nonferrous material on behalf of the seller to the junk dealer
12 or the recycler.

13 (d) This section shall not apply to the redemption of nonferrous
14 material having a value of not more than twenty dollars (\$20) in
15 a single transaction when the primary purpose of the transaction
16 is the redemption of beverage containers under the California
17 Beverage Container Recycling and Litter Reduction Act, as set
18 forth in Division 12.1 (commencing with Section 14500) of the
19 Public Resources Code.

20 (e) This section shall not apply to coin dealers or to automobile
21 dismantlers, as defined in Section 220 of the Vehicle Code.

22 (f) For the purposes of this section, "nonferrous material" means
23 copper, copper alloys, stainless steel, or aluminum, but does not
24 include beverage containers, as defined in Section 14505 of the
25 Public Resources Code, that are subject to a redemption payment
26 pursuant to Section 14560 of the Public Resources Code.

27 (g) This section is intended to occupy the entire field of law
28 related to junk dealer or recycler transactions involving nonferrous
29 material. However, a city or county ordinance, or a city and county
30 ordinance, relating to the subject matter of this section is not in
31 conflict with this section if the ordinance is passed by a two-thirds
32 vote and it can be demonstrated by clear and convincing evidence
33 that the ordinance is both necessary and addresses a unique problem
34 within and specific to the jurisdiction of the ordinance that cannot
35 effectively be addressed under this section.

36 (h) This section shall become operative on December 1, 2008.

37 SEC. 3. Section 21608.5 of the Business and Professions Code,
38 as added by Section 5 of Chapter 731 of the Statutes of 2008, is
39 amended to read:

1 21608.5. (a) A junk dealer or recycler in this state shall not
2 provide payment for nonferrous material unless, in addition to
3 meeting the written record requirements of Sections 21605 and
4 21606, all of the following requirements are met:

5 (1) The payment for the material is made by cash or check. The
6 check may be mailed to the seller at the address provided pursuant
7 to paragraph (3) or the cash or check may be collected by the seller
8 from the junk dealer or recycler on *or after* the third business day
9 after the date of sale.

10 (2) At the time of sale, the junk dealer or recycler obtains a clear
11 photograph or video of the seller.

12 (3) (A) Except as provided in subparagraph (B), the junk dealer
13 or recycler obtains a copy of the valid driver's license of the seller
14 containing a photograph and an address of the seller or a copy of
15 a state or federal government-issued identification card containing
16 a photograph and an address of the seller.

17 (B) If the seller prefers to have the check for the material mailed
18 to an alternative address, other than a post office box, the junk
19 dealer or recycler shall obtain a copy of a driver's license or
20 identification card described in subparagraph (A), and a gas or
21 electric utility bill addressed to the seller at that alternative address
22 with a payment due date no more than two months prior to the
23 date of sale. For purposes of this paragraph, "alternative address"
24 means an address that is different from the address appearing on
25 the seller's driver's license or identification card.

26 (4) The junk dealer or recycler obtains a clear photograph or
27 video of the nonferrous material being purchased.

28 (5) The junk dealer or recycler shall preserve the information
29 obtained pursuant to this ~~paragraph~~ *subdivision* for a period of two
30 years after the date of sale.

31 (6) (A) The junk dealer or recycler obtains a thumbprint of the
32 seller, as prescribed by the Department of Justice. The junk dealer
33 or recycler shall keep this thumbprint with the information obtained
34 under this subdivision and shall preserve the thumbprint in either
35 hardcopy or electronic format for a period of two years after the
36 date of sale.

37 (B) Inspection or seizure of the thumbprint shall only be
38 performed by a peace officer acting within the scope of his or her
39 authority in response to a criminal search warrant signed by a
40 magistrate and served on the junk dealer or recycler by the peace

1 officer. Probable cause for the issuance of that warrant must be
2 based upon a theft specifically involving the transaction for which
3 the thumbprint was given.

4 (b) Paragraph (1) of subdivision (a) shall not apply if, during
5 any three-month period commencing on or after the effective date
6 of this section, the junk dealer or recycler completes five or more
7 separate transactions per month, on five or more separate days per
8 month, with the seller and, in order for paragraph (1) of subdivision
9 (a) to continue to be inapplicable, the seller must continue to
10 complete five or more separate transactions per month with the
11 junk dealer or recycler.

12 (c) This section shall not apply if, on the date of sale, the junk
13 dealer or recycler has on file or receives all of the following
14 information:

15 (1) The name, physical business address, and business telephone
16 number of the seller's business.

17 (2) The business license number or tax identification number
18 of the seller's business.

19 (3) A copy of the valid driver's license of the person delivering
20 the nonferrous material on behalf of the seller to the junk dealer
21 or the recycler.

22 (d) This section shall not apply to the redemption of nonferrous
23 material having a value of not more than twenty dollars (\$20) in
24 a single transaction, when the primary purpose of the transaction
25 is the redemption of beverage containers under the California
26 Beverage Container Recycling and Litter Reduction Act, as set
27 forth in Division 12.1 (commencing with Section 14500) of the
28 Public Resources Code.

29 (e) This section shall not apply to coin dealers or to automobile
30 dismantlers, as defined in Section 220 of the Vehicle Code.

31 (f) For the purposes of this section, "nonferrous material" means
32 copper, copper alloys, stainless steel, or aluminum, but does not
33 include beverage containers, as defined in Section 14505 of the
34 Public Resources Code, that are subject to a redemption payment
35 pursuant to Section 14560 of the Public Resources Code.

36 (g) This section is intended to occupy the entire field of law
37 related to junk dealer or recycler transactions involving nonferrous
38 material. However, a city or county ordinance, or a city and county
39 ordinance, relating to the subject matter of this section is not in
40 conflict with this section if the ordinance is passed by a two-thirds

1 vote and it can be demonstrated by clear and convincing evidence
2 that the ordinance is both necessary and addresses a unique problem
3 within and specific to the jurisdiction of the ordinance that cannot
4 effectively be addressed under this section.

5 (h) This section shall become operative on December 1, 2008.

6 ~~SECTION 1. Section 21606 of the Business and Professions~~
7 ~~Code is amended to read:~~

8 ~~21606. (a) Every junk dealer and every recycler shall set out~~
9 ~~in written record as required by this article all of the following:~~

10 ~~(1) The place and date of each sale or purchase of junk made~~
11 ~~in the conduct of his or her business as a junk dealer or recycler.~~

12 ~~(2) The name, valid driver's license number and state of issue~~
13 ~~or California-issued identification card number, and vehicle license~~
14 ~~number including the state of issue of any motor vehicle used in~~
15 ~~transporting the junk to the junk dealer's or recycler's place of~~
16 ~~business.~~

17 ~~(3) The name and address of each person to whom junk is sold~~
18 ~~or disposed of, and the license number of any motor vehicle used~~
19 ~~in transporting the junk from the junk dealer's or recycler's place~~
20 ~~of business.~~

21 ~~(4) A description of the item or items of junk purchased or sold,~~
22 ~~including the item type and quantity, and identification number,~~
23 ~~if visible.~~

24 ~~(5) A statement indicating either that the seller of the junk is~~
25 ~~the owner of it, or the name of the person he or she obtained the~~
26 ~~junk from, as shown on a signed transfer document.~~

27 ~~(b) Any person who makes, or causes to be made, any false or~~
28 ~~fictitious statement regarding any information required by this~~
29 ~~section is guilty of a misdemeanor.~~

30 ~~(c) Every junk dealer and every recycler shall report the~~
31 ~~information required in subdivision (a) to the chief of police or to~~
32 ~~the sheriff in the same manner as described in Section 21628.~~